SINGAPORE REPORTS

RE JIWAT G. ADVANI, AN ADVOCATE & SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) January 22, 1988]

[Singapore – Originating Summons No. 991 of 1987]

Legal Profession – Improper Conduct – Professional duty – Allegation of grossly improper conduct in the discharge of – Preparatory acts for the commission of the offence of forgery – Complaints before Disciplinary Committee – Disciplinary action – Solicitor asked to show cause – Highly exceptional circumstances – Legal Profession Act (Cap. 161, 1985 Ed.), ss. 80 & 94.

In this case, complaints were made to the Disciplinary Committee that the respondent had conspired with three other persons to forge the will of his deceased father-in-law and that he had been guilty of grossly improper conduct in the discharge of his professional duty. The Disciplinary Committee in their report found that the evidence adduced could not sustain a charge of criminal conspiracy to forge the will and that the respondent was not guilty of an attempt to forge the will of the deceased. In the view of the Committee, what the respondent did were preparatory acts but they found that the respondent's conduct was unbefitting of a solicitor as an officer of the Supreme Court and a member of an honourable profession and accordingly determined that cause of sufficient gravity for disciplinary action existed under section 80 of the Legal Profession Act. The respondent was therefore called upon to show cause why he should not be dealt with under the section.

Held: (1) in normal circumstances where a solicitor carries out such preparatory acts as the respondent did, there would be no doubt that such acts would amount to grossly improper conduct within the meaning of section 80 of the Legal Profession Act meriting the appropriate punishment as therein prescribed;

(2) the circumstances in which the respondent carried out the preparatory acts in this case were highly exceptional. He was in an emotional state after the death of his father-in-law and he immediately abandoned what he was doing;

(3) having regard to the very exceptional circumstances, the preparatory acts carried out by the respondent did not amount to grossly improper conduct in the discharge of his professional duty;

(4) while no cause of sufficient gravity exists for disciplinary action under section 80 of the Act, such improper conduct merits a severe reprimand from the Disciplinary Committee under section 94(1) of the Act.

SHOW CAUSE PROCEEDINGS.

George Carman Q.C. (*H.E. Cashin* and *Dr. Myint Soe* with him) for the respondent.

Cheong Yuen Hee for the Law Society.

Cur. Adv. Vult.

Thean J. (delivering the judgment of the court): The material facts that gave rise to these proceedings are briefly these: Jiwat G. Advani ("the respondent"), an advocate and solicitor of the Supreme Court, was at the material time the senior partner of the firm of Advani Hoo, Morris and Kumar, and has been in practice as an advocate and solicitor since 1962. His father-in-law, Manghanmall Udharam ("the deceased"), was a very wealthy man with vast business interests in Singapore, Hong Kong, Middle East, Europe, Africa and the United States. Whilst on a business and family visit to Singapore he died unexpectedly, intestate, on April 3, 1985; he was survived by his wife and five daughters, one of whom is the wife of the respondent. The next few days immediately following the death of the deceased were extremely hectic for the respondent; he had to inform the deceased's relatives and friends in different parts of the world of the sad news and look after them upon their arrival in Singapore, and at the same time he had also to see to the funeral arrangements, including the cremation which took place on Saturday, April 6, 1985. The respondent was very close to his father-in-law and was deeply shocked by the sudden death and was under severe emotional stress; he did not attend his law office for several days after the death of his father-in-law.

On April 9, 1985, he went to his law office; he arrived there at about 9 a.m. Shortly thereafter, three Sindi gentlemen, Gopaldas B. Mahbubhani, Khubchand Daswani and Doulatram Boolchand, came to see him without any appointment. The first two are directors of the deceased's corporation, Chotirmall & Co., and the third is the brother of the respondent's mother-in-law. The three men had come to offer their condolences and also to thank the respondent for all that he had done during the bereavement. Gopaldas Mahbubhani produced (amongst other things) an onion skin sheet of paper in blank except for the signature of the deceased thereon at the bottom, and handed it to the respondent stating that he had been instructed to do so by the deceased in the event of his death. The respondent then did the following things: he instructed his secretary to make a photocopy of the onion skin sheet of paper and cut the photocopy to the size of the onion skin sheet of paper, and he dictated (but did not complete) a will, in which the deceased was to give all his property to his wife. He did not complete the dictation of the will because while dictating he looked up and noticed the uneasy look of his secretary, who also said something. That immediately alerted him what he was doing was not proper. He acknowledged that it was not proper and aban-

doned what he was doing. He then destroyed the onion skin sheet of paper.

Before the Disciplinary Committee ("the Committee"), the complaints against the respondent were that he conspired with the three Sindi gentlemen to forge the will of the deceased and that he attempted to forge the will of the deceased, and that he had been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 80(2)(b) of the Legal Profession Act (Cap. 161) ("the Act"), or alternatively he did those acts which would render him liable to be disbarred or struck off the roll of court or suspended from practice if he were a solicitor in England within the meaning of section 80(2)(h) of the Act. The Committee in their report dated April 7, 1987 found that the evidence adduced could not sustain a charge of criminal conspiracy to forge the will and that the respondent was not guilty of an attempt to forge the will of the deceased. In the view of the Committee, what the respondent did were preparatory acts and did not exceed the limit of preparation to the stage of an attempt to commit the offence of forgery. However, the Committee determined that the evidence adduced in support of the complaints "showed that the respondent was guilty of reprehensible behaviour and reckless disregard of the high standard of conduct, integrity and responsibility required from a member of an honourable profession". The Committee found that the respondent's conduct was unbefitting a solicitor as an officer of the Supreme Court and a member of an honourable profession, and accordingly determined that cause of sufficient gravity for disciplinary action existed under section 80 of the Act.

In consequence, the respondent is now called upon to show cause why he should not be dealt with under the provisions of section 80 of the Act, and the only issue before us is whether the preparatory acts for the commission of the offence of forgery carried out by the respondent in his office on that fateful morning of April 9, 1985 amount to grossly improper conduct in the discharge of his professional duty. We would like to preface our decision on this issue by saying that in normal circumstances where a solicitor carries out such preparatory acts as the respondent did, we have no doubt whatsoever that such acts would amount to grossly improper conduct within the meaning of that section meriting the appropriate punishment as therein prescribed. However, plainly, each case will have to be decided on its own special facts, and much of course depends on the circumstances in which such preparatory acts are carried out.

It is submitted by Mr. Carman on behalf of the respondent that the instant case is very unusual and the relevant circumstances in which the respondent committed the acts complained of were highly exceptional. It is not in dispute, he submits, that the respondent had a very close and intimate relationship with his late father-in-law, and that the sudden death of the latter was a severe emotional shock and a great personal loss to him. The few days immediately following the death were extremely hectic for the respondent who was already under severe emotional stress. What the respondent did, in Mr. Carman's submission, was totally irrational: there was no rational motive for what he did, and certainly what he did was not motivated by any gain for himself directly or indirectly. On the contrary, if what he had intended had been carried into effect his wife would have been deprived of 10% of a very substantial estate. What the respondent did was purely motivated by his emotional desire, which undoubtedly clouded his judgment, to respect and give effect to the wishes or intention of his late father-in-law, which the latter had expressed in his lifetime that should he predecease his wife, as it had happened, all his property should go to his wife. That also was wholly unnecessary because on the Sunday evening immediately preceding April 9, all the daughters of the deceased, including the respondent's wife, had agreed that whatever claims they had to the estate of the deceased they would renounce in favour of their mother; eventually on April 18, 1985, they did sign a deed of renunciation to give effect to this agreement. In conclusion, Mr. Carman submits that no harm was intended by the respondent and no harm occurred, and no one suffered, except the respondent. Further, the moment the respondent realised that what he was doing was improper, he immediately stopped. What the respondent did was a transient lapse in his conduct which occurred at the time when the respondent was in a highly emotional and exhausted state.

We think that there is much force in Mr. Carman's submission and agree that the circumstances in which the respondent carried out those preparatory acts were highly exceptional. Fortunately for him, in his emotional state, he was alerted of the impropriety of his acts by his secretary and he immediately abandoned what he was doing. Having regard to the very exceptional circumstances – here we must emphasize strongly the exceptional

circumstances – we are not satisfied that those preparatory acts carried out by the respondent amount to grossly improper conduct in the discharge of his professional duty. It seems to us fair and just to describe his conduct in all the circumstances as improper but not grossly improper. We do not condone for a moment what the respondent did and we deprecate such conduct on his part. In our opinion, while no cause of sufficient gravity exists for disciplinary action under section 80 of the Act, such improper conduct undoubtedly merits a severe reprimand from the Committee under section 94(1) of the Act.

In the circumstances, we dismiss this application. We make no order as to costs.

Application dismissed.

Solicitors: *Murphy & Dunbar; Y.H. Cheong.*

UNITED OVERSEAS BANK LTD. v. SIN LEONG IRONBED AND FURNITURE MANUFACTURING CO. (PTE) LTD. & 5 ORS.

[A.C.J. (Chan Sek Keong J.C.) January 20, 1988]

[Singapore – Suit No. 657 of 1987]

Civil Procedure – Costs – Order as to fixed costs – Whether order correct – R.S.C. 1970, O. 59 r. 31(4) – Meaning of – Whether costs can be taxed costs on solicitor and client basis.

The plaintiffs granted certain loans to the first defendant. The loans were guaranteed by the second to the sixth defendants.

The plaintiffs brought an action to recover the loans. The plaintiffs also claimed costs on a solicitor and client basis. After applying for summary judgment, the plaintiffs were given leave to enter final judgment. However, they were only allowed fixed costs of $700 as provided in Appendix 2 to Order 59 of the Rules of the Supreme Court 1970. The plaintiffs appealed against the decision on costs.

Held, allowing the appeal: (1) the expression "unless the court otherwise orders" in Order 59 rule 31(4) gives the court the discretion to order taxed costs and not to order no costs;

(2) the plaintiffs were not invoking the power of the court to award them costs in accordance with the rules of court but in accordance with their contractual rights;

(3) neither Order 59 rule 2(2) nor rule 31(4) has the effect of curtailing the plaintiffs' right in the present action to solicitor and client costs as agreed by the defendants. Since the plaintiffs were exercising their contractual rights in recovering costs, Order 59 rules 2(2) and 31(4) were not relevant to the plaintiffs' claim;

(4) the costs of this action should be taxed on a solicitor and client basis.

Cases referred to:

(1) *Mansfield* v. *Robinson* [1928] 2 K.B. 353.
(2) *Sim Lim Finance Ltd.* v. *Pelandok Enterprises Pte. Ltd.* [1981] 1 M.L.J. 280.
(3) *Economic Life Assurance Society* v. *Usborne & Ors.* [1902] A.C. 147.
(4) *Ex parte Fewings* (1883) 25 Ch.D. 338.
(5) *London Borough of Ealing* v. *El Isaac* [1980] 2 All E.R. 548.

APPEAL AGAINST REGISTRAR'S DECISION.

R.E. Martin for the plaintiffs.
R.S. Wijaya for the defendants.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an appeal by the plaintiffs against the decision of the Senior Assistant Registrar in refusing to award to them taxed costs on a solicitor and client basis.

The plaintiffs, who are bankers, commenced an action against the first defendant for repayment of $63,900.52 being the outstanding credit facilities granted to it and against the second to sixth defendants as guarantors. The plaintiffs also claim costs on a solicitor and client basis as part of their claim in their pleadings.

It is not disputed that the plaintiffs had agreed to grant banking facilities to the first defendant on terms as to costs of enforcement as follows:

"5. All costs, expenses, legal or otherwise connected with the execution, implementation and enforcement of the above line of credit shall be borne by your company."

It is also not disputed by the guarantors who had appeared that they had also agreed to pay the plaintiffs' costs of enforcement as follows:

"... all costs including solicitor and client costs charges and expenses which you may incur in enforcing or seeking to obtain payment of all or any of the moneys hereby guaranteed."

The writ was served on all the defendants other than the fifth defendant. Each of them entered appearance, following which the plaintiffs applied for summary judgment. The plaintiffs were given leave to enter final judgment against the said